

APPEAL NO. 172699
FILED JANUARY 3, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 27, 2017, with the record closing on October 10, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the respondent (claimant) was not injured in the course and scope of his employment on (date of injury); (2) the claimant had disability from the claimed injury of (date of injury), from April 20, 2017, through the date of the CCH; (3) the appellant (carrier) did not timely contest the injury in accordance with Section 409.021 and consequently waived the right to contest compensability of the claimed injury of (date of injury); and (5) the claimant sustained a compensable injury on (date of injury).

The carrier appealed the ALJ's determinations regarding carrier waiver under Section 409.021, compensability of the (date of injury), claimed injury, and disability. The carrier contends on appeal that the ALJ's determinations are against the great weight of the evidence. The claimant responded, urging affirmance of the ALJ's determinations. The ALJ's determination that the claimant was not injured in the course and scope of his employment on (date of injury), was not appealed and has become final pursuant to Section 410.169.

DECISION

Reformed in part and reversed and rendered in part.

The parties stipulated, in part, that the date of the claimed injury is (date of injury). The claimant testified he was injured while performing his duties as a package sealer for the employer.

PARTIES PRESENT

(Ms. L) testified at the CCH as a witness on behalf of the carrier. However, the decision incorrectly reflects that no witnesses testified for the carrier. We reform the ALJ's decision to reflect that Ms. L testified as a witness for the carrier.

EVIDENCE PRESENTED

The record reflects that Claimant's Exhibits 1 through 9 were admitted, and Carrier's Exhibits A through O were admitted. However, the decision incorrectly states Claimant's Exhibits 1 through 8 were admitted, and Carrier's Exhibits A through N were admitted. We reform the ALJ's decision to state Claimant's Exhibits 1 through 9 and

Carrier's Exhibits A through O were admitted to reflect the evidence as actually admitted.

CARRIER WAIVER

The ALJ found that the carrier had notice of the (date of injury), claimed injury on June 23, 2017. The evidence supports the ALJ's finding. We note that the 60th day after June 23, 2017, is August 22, 2017. The ALJ noted in her discussion that although a copy of an amended Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) dated August 8, 2017, was in evidence, there was no copy that had been date stamped as received by the Texas Department of Insurance, Division of Workers' Compensation (Division). The ALJ therefore determined that the carrier did not timely contest the injury in accordance with Section 409.021 and consequently waived the right to contest compensability of the claimed injury of (date of injury).

The Benefit Review Conference (BRC) in this case was held on July 31, 2017. The carrier's adjuster testified at the CCH that she had previously filed a PLN-1 with the Division on May 5, 2017, disputing a March 30, 2017, injury because she had no knowledge of an (date of injury), date of injury. The adjuster also testified that she became aware of the (date of injury), date of injury when talking to the carrier's attorney right after the July 31, 2017, BRC, and that she changed the date of injury on the claim to reflect (date of injury). During the BRC the carrier contended that it was continuing to dispute the claimed injury in its entirety. The BRC report dated August 4, 2017, reflects the carrier's position that it was denying the claimed injury of (date of injury), in its entirety. It is clear that the claimant and the Division were informed of the carrier's position at the BRC held on July 31, 2017, and the carrier's dispute of compensability of the (date of injury), claimed injury and its reasons for that dispute were reduced to writing by the benefit review officer (BRO) in the BRC report dated August 4, 2017.

The Appeals Panel has previously held in similar cases that a carrier's dispute at a BRC was sufficient to satisfy the requirements for filing a written notice of denial when the BRC was held within the time period for disputing a claim, the carrier stated its reasons for contesting compensability at the BRC, the contest of compensability and reasons therefor were reduced to writing by the BRO within the time period for filing a dispute, and the parties proceeded to a CCH based on the carrier's contest of compensability. See Appeals Panel Decision (APD) 022201, decided October 10, 2002; APD 980194, decided February 25, 1998; APD 962450, decided January 15, 1997; and APD 94292, decided April 26, 1994. In the case on appeal the carrier notified the claimant and the Division at the BRC held on July 31, 2017, that it was disputing the (date of injury), claimed injury in its entirety, and the BRC report dated August 4, 2017, clearly reflects the carrier's position. As noted previously the deadline

by which the carrier had to file a denial of the claimed injury was August 22, 2017. Based on the facts of this case and the prior holdings discussed above, we reverse the ALJ's determination that the carrier did not timely contest the injury in accordance with Section 409.021, and consequently waived the right to contest compensability of the claimed injury of (date of injury), and we render a new decision that the carrier did timely contest the injury in accordance with Section 409.021 and therefore did not waive the right to contest compensability of the claimed injury of (date of injury).

COMPENSABILITY AND DISABILITY

As previously mentioned the ALJ's determination that the claimant was not injured in the course and scope of his employment on (date of injury), was not appealed and has become final. The ALJ determined that the claimant sustained a compensable injury on (date of injury), and had disability from the claimed injury of (date of injury), from April 20, 2017, through the date of the CCH based on her determination of carrier waiver under Section 409.021. Given that we have reversed the ALJ's carrier waiver determination and have rendered a new decision that the carrier did timely contest the injury in accordance with Section 409.021 and therefore did not waive the right to contest compensability of the claimed injury of (date of injury), we also reverse the ALJ's determinations that the claimant sustained a compensable injury on (date of injury), and that the claimant had disability from the claimed injury of (date of injury), from April 20, 2017, through the date of the CCH, and we render a new decision that the claimant did not sustain a compensable injury on (date of injury), and the claimant did not have disability from the claimed injury of (date of injury), from April 20, 2017, through the date of the CCH.

SUMMARY

We reform the ALJ's decision to reflect that Ms. L testified as a witness for the carrier.

We reform the ALJ's decision to state Claimant's Exhibits 1 through 9 and Carrier's Exhibits A through O were admitted to reflect the evidence as actually admitted.

We reverse the ALJ's determination that the carrier did not timely contest the injury in accordance with Section 409.021, and consequently waived the right to contest compensability of the claimed injury of (date of injury), and we render a new decision that the carrier did timely contest the injury in accordance with Section 409.021 and therefore did not waive the right to contest compensability of the claimed injury of (date of injury).

We reverse the ALJ's determination that the claimant sustained a compensable injury on (date of injury), and we render a new decision that the claimant did not sustain a compensable injury on (date of injury).

We reverse the ALJ's determination that the claimant had disability from the claimed injury of (date of injury), from April 20, 2017, through the date of the CCH, and we render a new decision that the claimant did not have disability from the claimed injury of (date of injury), from April 20, 2017, through the date of the CCH.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge